April 21, 1998

SUMMARY OF ATTORNEY GENERAL'S DRAFT TOBACCO RULES

The Attorney General has drafted two sets of proposed regulations governing the sale, distribution and advertising of tobacco products. One set addresses cigarettes and smokeless tobacco. The other addresses cigars and little cigars. The proposed regulations are still in draft form. They do not yet specify an effective date or pertinent distance requirements or sales volumes. The Attorney General has announced that he will hold "field hearings" on the proposed regulations on May 20 and 21 in Boston and Springfield.

The draft proposed regulations would (1) prohibit a variety of sales and advertising activities by tobacco manufacturers and retailers, by defining those activities as "unfair" or "deceptive" acts or practices under M.G.L. ch. 93A, Sec. 2(c); (2) require retailers to undertake a variety of activities, as a condition of being able to sell tobacco products without being held in violation of ch. 93A; and (3) prescribe health warnings for packages of cigars and little cigars sold in Massachusetts and advertisements for such products within Massachusetts.

SALES RESTRICTIONS

- *Ban* distribution of product samples and promotional product give-aways. Ban would apparently apply anywhere a consumer "can purchase or otherwise obtain" the product.
- *Ban* sale of single cigarettes or little cigars, and *ban* sale of all covered tobacco products in any quantity smaller than smallest package from manufacturer.
- *Ban* mail distribution of product, in redemption of coupons or proofs of purchase, or as samples (but mail-order sale with age verification would not be banned).
- *Ban* sale of product with "gift" of non-tobacco merchandise (*e.g.*, lighters, caps).
- *Ban* self-service displays and vending machines except in facilities to which individuals under 18 (apparently including sales clerks) are denied access at all times.

RETAILER REQUIREMENTS

- Retailers must implement and operate employee training programs to promote compliance with laws prohibiting sales to minors. These programs must, at a minimum, meet the guidelines set forth in "Model Training Program for Tobacco Retailers" developed by and available from the Attorney General.
- Retailers must conduct in-house "secret shopper" programs (at least three visits to each retail sales outlet per quarter) if the retailer (1) has an annual volume of combined product sales in excess of an as-yet-unspecified amount, or (2) is located within an as-yet-unspecified distance of a public playground or playground area in a public park, elementary school or secondary school.

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Source: https://www.industrydocuments.ucsf.edu/docs/xpgy0000

- Retailers must post in a conspicuous place, near the sales counter, a 12" x 12" sign, in black text on white background, or in white text on black background, stating: "KIDS: SMOKING CAN KILL YOU!".

- Retailers must offer any individual under 18 who unsuccessfully attempts to buy covered tobacco products "a fact sheet about underage smoking" developed by and available from the Attorney General.

ADVERTISING RESTRICTIONS

- *Ban* outdoor advertising within an as-yet-unspecified distance from any public playground or playground area in a public park, elementary school or secondary school. Ban includes advertising in enclosed stadia and advertising within a retail establishment "directed toward" or "visible from" the outside of the store.

- *Ban* point-of-sale advertising in any retail establishment accessible to individuals under 18 within an as-yet-unspecified distance from any public playground or playground area in a public park, elementary school or secondary school.

  Exception allows two signs for each manufacturer with less than a 25 percent market share, three signs for each manufacturer with 25 percent or greater market share, and one sign for the retailer for its house brand, but any such advertisements may not be larger than 576 square inches "either individually or in the aggregate."

CIGAR AND LITTLE CIGAR HEALTH WARNINGS

- *Ban* sale or distribution within Massachusetts of any cigar or little cigar the package of which fails to carry one of five specified health warnings, based on the current federally mandated cigarette and smokeless tobacco warnings.

- *Ban* any advertisement for cigars and little cigars disseminated within Massachusetts and directed to consumers in Massachusetts (including but not limited to billboards, magazines, newspapers, television and radio) that fails to carry one of the five specified health warnings.

- Warnings must be in white text on a black background or in black text on a white background. Warnings must occupy "at least" the top 25 percent of the front panel of little cigar packages, and 25 percent of the inside cover of boxes of big cigars or any other location readily visible to consumers when displayed for purchase. Warnings must occupy 20 percent of the area of the advertisement. Package and advertising warnings must be rotated quarterly in alternating sequence.

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